# ARKANSAS SUPREME COURT

No. CR 06-1484

NOT DESIGNATED FOR PUBLICATION

CHARLES ALEXANDER/RYAHIM
Appellant

v.

STATE OF ARKANSAS
Appellee

**Opinion Delivered** February 22, 2007

*PRO SE* MOTIONS FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF, TO FILE A BRIEF WITH OVER-LENGTH ARGUMENT, AND FOR WAIVER OF REQUIREMENT FOR APPELLANT TO PROVIDE SEVENTEEN COPIES OF APPELLANT'S BRIEF [CIRCUIT COURT OF PULASKI COUNTY, CR 97-1450, HON. JOHN W. LANGSTON, JUDGE]

APPEAL DISMISSED; MOTIONS MOOT.

**PER CURIAM**

In 1997, Charles Alexander/Ryahim was convicted of first degree murder and sentenced to life imprisonment as a habitual offender. This court affirmed. *Alexander v. State*, 335 Ark. 131, 983 S.W.2d 110 (1998). Subsequently, appellant filed a petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. The trial court denied the petition and we affirmed. *Alexander v State*, CR 00-453 (Ark. Nov. 8, 2001) (*per curiam*).

In 2006, appellant filed a *pro se* petition in the trial court for a writ of habeas corpus pursuant to Act 1780, as amended by Act 2250 of 2005 and codified at Ark. Code Ann. §§ 16-112-201–207 (Repl. 2006). The trial court denied the petition, and appellant, proceeding *pro se*, lodged an appeal of that order in this court. Now before us are appellant's motions for extension of time to file

appellant's brief, to file a brief with an over-length argument, and for waiver of the requirement to file seventeen copies of appellant's brief. As appellant has tendered two copies of his brief on the date the brief was due, the motion for extension of time is moot.

We need not consider the remaining motions as it is apparent that appellant could not prevail in this appeal if it were permitted to go forward. Accordingly, we dismiss the appeal and hold the remaining motions moot. This court has consistently held that an appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *See Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*).

Act 1780 of 2001, as amended by Act 2250 of 2005, and codified at Ark. Code Ann. §§ 16-112-201 – 207 (Repl. 2006), provide that a writ of *habeas corpus* can issue based upon new scientific evidence proving a person actually innocent of the offense or offenses for which he or she was convicted. *See* Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006) and sections 16-112-201–207; *see also Echols v. State*, 350 Ark. 42, 84 S.W.3d 424 (2002) (*per curiam*) (decision as prior law). However, appellant filed his petition after act 1780 as amended became effective.

There are a number of predicate requirements that must be met under §§ 16-112-201 – 203 before a circuit court can order that testing be done to establish an appellant's claim. As a threshold issue, the requested tests must not have been available at the time of an appellant's trial. Alternatively, the evidence to be tested could not have been previously discovered through the exercise of due diligence, and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact-finder would find the petitioner guilty of the underlying offense. § 16-112-201(a).

Furthermore, the specific evidence to be tested must have been secured as a result of the conviction of an offense being challenged under § 16-112-201, and is currently in the possession of the state, subject to a chain of custody and under conditions sufficient to ensure that the evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the proposed testing. §§ 16-112-202(1) and (4). If the evidence had been subjected to prior testing, the petitioner may only request a new testing method or technology that is substantially more probative than the prior testing. § 16-112-202(3).

In the instant matter, appellant was convicted of the shooting death of Marcus Brown. The State's argument at trial was that appellant intended to kill another person and mistakenly shot the victim. Appellant maintains that another person was the perpetrator of the crime.

In his petition, appellant set out numbered paragraphs that contain the basis for his argument.[1] The allegations included claims of perjury by witnesses, prosecutorial misconduct, juror misconduct, police misconduct and judicial misconduct. The argument portion of the petition additionally contained allegations of ineffective assistance of counsel, conflict of interest, insufficient evidence, lack of due process and impeachable offenses on the part of the government and the judiciary. None of these claims are contemplated by or are within the scope of §§ 16-112-201 – 208 as amended and therefore, not the proper basis for a petition for writ of habeas corpus under the statutory provisions, and will not be considered.[2]

[1]We note that the petition for writ of habeas corpus contained in the record on appeal was incomplete in that page three was missing. However, the brief tendered by appellant contained the entire petition, although not printed using the same font or filed of record with the trial court. As the missing page has been supplied, we find no need to issue a writ of *certiorari* to complete the record on appeal.

[2]We note that appellant previously sought postconviction relief under Ark. R. Crim. P. 37.1 and through a petition for writ of habeas corpus in the county where he was incarcerated. Neither of these procedures granted appellant relief. *See Alexander v. State*, CR 00-453 (Ark.

All other points raised were related to matters involving scientific testing. The crux of appellant's request for scientific testing related to his contention that Marcus Johnson shot the victim. Appellant believed that a handgun confiscated from Mr. Johnson in another shooting in 1997 was also used to shoot the victim in this matter. Appellant maintained that the bullet taken from the victim here can be compared to bullets fired from Mr. Johnson's gun, thus proving that Mr. Johnson shot and killed Mr. Brown. At appellant's trial, it was established that a gun was not located, and thus, a number of bullets that were retrieved could not be tested to establish what gun was used in the shooting.

Section 16-112-201 as amended concerns only the evidence related to the trial of the petitioner. Section 16-112-202(1) requires that the particular evidence to be tested must be related to the petitioner's own conviction. Here, appellant seeks testing of a handgun apparently introduced into evidence in criminal trials that do not involve appellant. As written, § 16-112-201 et seq. does not take into consideration or allow testing of evidence extraneous to appellant's own criminal trial.

Further, as to actual innocence, the result of the testing would not prove that appellant did not kill the victim. At most, such findings would only show that the confiscated gun fired a bullet at the victim. This result could not disprove other possibilities, such as appellant was using a gun that he borrowed from Mr. Johnson, or that Mr. Johnson later took or borrowed appellant's gun. There simply is no basis for scientific testing of the handgun taken from Mr. Johnson.

Appellant also contended that other evidence collected at the crime scene should have been tested. These items included blood samples, the bullet removed from the victim, bullet casings, and clothing placed near or on the victim. Appellant concluded that "if this pertinent information had

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Nov. 8, 2001) (*per curiam*) and *Alexander v. State*, 04-1303 (Ark. June 23, 2005) (*per curiam*).

been investigated and tested, it would have very well exonerated the Appellant." However, appellant failed to state what tests should have been performed on these items, and how the results would have proved his innocence.

Appellant believed that the jacket thought to have been worn by the victim either had a red substance painted on the back to resemble blood, or that the jacket did not have a bullet hole where there should have been an entry. If no bullet holes could be located on the jacket, this information cannot disprove that he was at the crime scene. Likewise, if the substance on the jacket was not blood, this information does not place appellant somewhere other than the location of the crime. Instead, this testing relates more to appellant's claims that the police tampered with the crime scene in an effort to frame him for the shooting.

Furthermore, testing the blood located at the crime scene in order to match the blood to the victim or other persons has no logical relationship to whether appellant shot the victim. Although appellant maintains that at least two other people at the scene were wounded by bullets, and that the victim's body was dragged to a different spot by the police, finding anyone else's blood on the sidewalk does not disprove that appellant killed the victim. The possibility exists that appellant may have been at the crime scene, but simply did not spill any blood there. And, if any blood found could be matched to Mr. Johnson, such finding does not disprove other theories, such as that both appellant and Mr. Johnson were at the crime scene that night, either at the same time or at different times. By *including* Mr. Johnson as the possible shooter, appellant does not automatically *exclude* himself. This testing would not produce new evidence that raises a reasonable probability that appellant did not commit the offense. § 16-112-202(8).

Finally, appellant has failed to show that any of the items to be tested are currently in the

possession of the state, subject to a chain of custody and under conditions to sufficient to ensure that the evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the proposed testing. Sections 16-112-202(14). Appellant therefore did not show that a basis existed for granting his petition.

Appeal dismissed; motions moot.